

Arkansas Credit Reserve

Program Guidelines

Executive Summary

The Arkansas Credit Reserve (“ACR”) is a pool guaranty program established and administered by Arkansas Development Finance Authority (“ADFA”). This program was created by Act 1222 of the Regular Session of the 89th General Assembly of the State of Arkansas in 2013.

In response to the current economic climate, the Board of Directors designated \$500,000 for allocation to the ACR Program as a way to generate small business loans throughout the state. This program is designed to encourage lenders located in the state of Arkansas (“Lenders”) to extend credit in amounts up to \$500,000 to Arkansas businesses by establishing a reserve account at each participating Lender (“ACR Account”) to cover losses on loans it registers under the program (“Registered Loans”). The program will also provide reserve funds for Registered Loans made to Arkansas business owned by women or minorities.

Registration fees in the amount of 1 percent (1.0%) of the maximum principal amount of each Registered Loan will be collected from the borrower and deposited into the participating Lender’s ACR Account which will be owned by the Program Manager. Funds from the ACR Program will also be deposited by the Program Manager in the Lender’s ACR Account based on the principal amount of the loan.

Losses from Registered Loans incurred by a participating Lender may be recovered from the reserves in the Lender’s ACR Account. The establishment of this loss reserve account enables a participating Lender to be more aggressive in making Registered Loans and expanding its market. However, if a Lender’s losses exceed the reserve funds in the ACR Account, the Lender would be at risk for the excess losses. If a Lender’s Registered Loans pay off without a loss, the reserve funds remain in its ACR Account unless the reserve funds exceed the aggregate outstanding principal balances of the Lender’s Registered Loans, in which case the excess will be returned to the Program Manager. If a Lender does not continue its participation in the program, the funds in its ACR Account will be returned to the Program Manager when the Lender has no Registered Loans outstanding.

These guidelines are meant to provide operational guidance for participating Lenders and are supplemental to the specific terms of a Lender Participation Agreement to be executed by the Program Manager and each Lender, the terms of which shall control.

ARKANSAS CREDIT RESERVE PROGRAM GUIDELINES

Section 1. Eligibility Requirements

Section 1.1 Eligible Lenders

An eligible lender is a depository institution which has been designated as an eligible public depository under the Public Deposit Protection Act or the Savings and Loan Association Public Deposit Protection Act, is located in the state of Arkansas, and regulated by Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve Board, the Arkansas Bank Department or similar regulatory agency (a “Bank Lender”).

Section 1.2 Eligible Borrowers

In order to be an eligible borrower under the program:

- a. The borrower must be carrying on a trade or business primarily within the State of Arkansas.
- b. The primary economic benefit of the loan must be contained in Arkansas.
- c. The borrower’s business may be not-for-profit or for profit.
- d. The borrower’s business may be any type of business including agricultural production and processing except as limited in Section 1.3 below.

Section 1.3 Eligible Loans

Eligible loans may be made for working capital, inventory, equipment, contract financing, lines of credit, and real estate projects. The aggregate principal amount of all Registered Loans to any borrower or any affiliates of a borrower shall not exceed \$500,000. The entire loan principal amount must be registered. No portion of the proceeds of an eligible loan may be used for the following:

- a. Refinancing of debt on the books of the Lender or affiliate bank except in the case that a Registered Loan is renewed or extended.
- b. Loans made to executive officers, directors, or principal shareholders of a Lender, or family members of the same. The basic definition used in this prohibition is the

same as Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O, and the Office of Thrift Supervision regulations at 12 C.F.R. §563.43.

- c. Loans to or for pyramid sales distribution plans; business engaged in political or lobbying activity; private or commercial golf course; country club; massage parlor; hot tub facility; suntan facility; racetrack or other facility used for gambling; store where the principal business is the sale of alcoholic beverage for consumption off-premises; governmental entity; business engaged in any illegal activity; business where a principal is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude; business principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs; business which presents live performances of a prurient sexual nature or derives more than 2 percent (2.0%) gross revenues from the sale of products or services of a prurient sexual nature.
- d. Financing for housing.
- e. Loans guaranteed by the Small Business Administration or United States Department of Agriculture.

Section 2. Program Participation

Section 2.1

Lender Participation Agreement; ACR account set up

- a. Eligible Lenders must execute a Lender Participation Agreement which does not require the Lender to register any loans under the ACR Program but does spell out the full requirements that apply when the Lender desires to register a loan under the program and the obligations of the Program Manager and the Lender thereunder.
- b. At the time the Lender Participation Agreement is signed, a money market account must be opened as the dedicated ACR Account in which to accumulate the program reserve funds related to its Registered Loans. The ACR Account shall be established at the Bank Lender, unless a different qualified banking institution is chosen by the Bank Lender. The account shall be entitled “Arkansas Development Finance Authority – ACR Account – (Lender’s name)”. Interest earned on the account will be distributed in the same manner as all other funds deposited therein.
- c. The signature card for a Bank Lender’s ACR Account shall be forwarded to ADFA for completion by the Program Manager. One signature from an authorized Program Manager staff member is necessary for account withdrawals.

Section 2.2

Loan Registration

- a. A separate Loan Registration Form (Appendix 1) must be completed for each eligible loan registered in the program. Evidence of deposit of the borrower’s registration fee into the ACR Account as required in Section 2.3 below and an executed Borrower

Notice and Waiver (Appendix 2) shall accompany the Loan Registration Form. The completed Loan Registration Form, fee deposit evidence, and executed Borrower Notice and Waiver may be faxed to the Program Manager's Economic Development group at 501/682-5939,

- b. Loans must be registered within 30 days after making the loan. For purposes of this program, the date the Lender makes the loan shall be deemed to be the date on which loan documents have been executed and the Lender obligates itself to disburse loan proceeds.

Section 2.3

Loan Registration Fees; ACR Program Matching Funds

- a. At the time of the Registered Loan closing, the Borrower shall pay a program loan registration fee of 1 percent (1.0%) of the total principal loan amount which shall be deposited into the Lenders ACR Account. The Borrower may finance these fees as an addition to the principal amount of the Registered Loan at the Lender's option, but the portion representing the loan registration fee must be deposited into the Lender's ACR Account.
- b. Upon acceptance of the loan into the program, the Program Manager will issue a check from ACR Program funds ("ACR Match") for deposit into the Lender's ACR Account based upon the following schedule:

Loan Amount: \$4,000 - \$65,000
ACR Program Match: Fixed at \$2,000
Borrower Fee: 1 %

Loan Amount: \$65,000 - \$250,000
ACR Program Match: 3%
Borrower Fee: 1%

Loan Amount: \$250,000 - \$500,000
ACR Program Match: \$7,500
Borrower Fee: 1%

Section 2.4

Extensions, Renewals, and Refinances of Registered Loans

- a. Registered Loans may be extended, renewed, and refinanced. At the time of extension, renewal or refinance, the Lender shall assess an additional loan registration fee of 1 percent (1.0%) of the increase to the original principal loan amount which shall be deposited into the Lender's ACR Account; however, there will not be an ACR Match regarding the increased amount.
- b. The Lender must notify the Program Manager of any extension, renewal, and refinance of a Registered Loan. When such change does not entail an increase of the principal loan amount, the Lender shall provide a written statement detailing the change accompanied with a copy of the original Loan Registration Form for the loan.

When the change entails an increase in principal loan amount, the Lender shall submit a new Loan Registration Form and evidence of the deposit of any additional registration fee paid by the borrower, along with a copy of the original Loan Registration Form and evidence of deposit.

Section 2.5

Annual Loan Status Reports; Withdrawal of Excess Funds in ACR Account by Program Manager

- a. On or before January 30 every year, each participating Lender must file a Status Report (Appendix 3) with the Program Manager for each of its Registered Loans, indicating outstanding balances of each Registered Loan as of the previous December 31.
- b. If upon receipt of the annual reports filed by each Lender concerning its Registered Loans, the Program Manager determines the balance in the Lender's ACR Account exceeds the aggregate Gross Loan Amounts of the Lender's Registered Loans, the Program Manager may withdraw the excess funds from the ACR Account. If a Lender ceases registering loans in the ACR Program the Program Manager may withdraw the remaining balance in the Lender's ACR Account when the Lender has no Registered Loans outstanding.

Section 3. Claims

Section 3.1

Determination of Amount of Claim

If a Registered Loan becomes delinquent or otherwise in default, the Lender may submit a request for loss reimbursement ("Claim") to the Program Manager equal to the total amount of outstanding principal and accrued interest on the Registered Loan charged off by the Lender together with the Lender's reasonable out-of-pocket expenses incurred by the Lender in pursuing recovery under the loan, provided however that the amount of the Claim shall not (a) exceed the original principal loan amount as stated in the loan documents at the time of the loan was registered, and (b) include any amount attributable to (i) damages paid by the Lender as a result of a legal claim against Lender for negligence, misconduct, or otherwise; or (ii) unpaid late charges or unpaid default interest charges imposed by the Lender.

Section 3.2

Timing of a Claim

The Lender may file a Claim with respect to a Registered Loan only upon a charge-off of all or a portion of the outstanding balance of the Registered Loan in accordance with the Lender's customary policies and procedures for charging of commercial loans or as required by federal or state regulatory agencies. Upon filing a Claim, the Lender shall cease to accrue interest on the Registered Loan in accordance with general accepted accounting principles and as required by federal or state regulatory agencies.

Section 3.3

Claim Process

- a. Upon making the charge-off per Section 3.2, the Lender may file a Claim with the Program Manager by submitting a completed Claim Form (Appendix 4), verified and signed by an authorized officer of the Lender, which shall be accompanied by a certified loan history and satisfactory evidence that the Lender has charged off such amount on its books. Claims must be delivered to the Program Manager not later than 30 calendar days after the date of the charge-off.
- b. The certified loan history which must accompany a Claim is a summary of disbursements, payments, accruals of interest, and any other charges with respect to the Registered Loan. The Lender shall provide the Program Manager with such further information concerning the loan as may be reasonable requested by the Program Manager. The Lender must retain documentation in its files evidencing all expenses for which a Claim is filed.
- c. The Program Manager will review the Claim submitted by the Lender Prior to payment. Within the 10-day period specified in Section 3.3 d. below, the Program Manager will determine and provide written notice of adjustment or proposed rejection of a Claim to the Lender and state the basis for the proposed rejection or adjustment. A Claim may be rejected or adjusted on the basis that any representation or warranty provided by the Lender with respect to a Registered Loan was known by the Lender, or should have been known by the Lender but for its gross negligence, to be false at the time the loan was filed for registration or Lender's failure to substantially comply with the requirements of the Lender Participation Agreement. Upon receiving a notice of rejection or adjustment, the Lender may object to such notice by delivering a written statement to the Program Manager explaining the basis for such objection within 30 days after receipt of the Program Manager's notice. After review of the Lender's objection, the Program Manager shall determine in its sole discretion whether to reject or adjust such Claim.
- d. Within 10 business days after receipt by the Program Manager of a completed Claim, the Program Manager shall pay, solely from funds available in the Lender's dedicated ACR Account, the amount of such Claim as approved by the Program Manager in accordance with Section 3.3(c).
- e. With respect to any Registered Loan for which a Claim has been paid, the Lender shall, within 60 days from the date the Claim is paid, provide the Program Manager with a report outlining the Lender's proposed plan for pursuing its collection rights with respect to the loan. Such report shall include the description, location, and estimated value of all collateral that secures payment of the Registered Loan and proposed methods for pursuing the Lender's rights against the collateral and any guarantors of the loan. Thereafter the Lender shall, on a periodic basis, but at least quarterly, file a report with the Program Manager summarizing the status of and any changes to the proposed collection plan or status of the collateral. At such time as the Lender determines such collection activities are no longer economically feasible, it will so advise the Program Manager, in writing, and thereafter no further reports are necessary.

Section 3.4

Insufficient funds

If there are insufficient funds in the Lender's ACR Account to pay the entire amount of the Lender's Claim, the Program Manager shall pay the Lender the current balance in the ACR Account. Such payment shall be deemed to satisfy the Claim in full and the Lender shall have no other or further right to receive any amount from the ACR Account. If the Lender submits two or more Claims contemporaneously and there are insufficient funds in the ACR Account to cover the entire amount of such Claims, the Lender shall designate the order of priority in which the Program Manager shall pay the Claims.

Section 3.5

Recoveries

- a. If subsequent to payment of all or part of a Claim by the Program Manager the Lender shall recover any amount of the Registered Loan with respect to which payment of the Claim was made, the Lender shall promptly deposit such recovered funds in the Lender's ACR Account, less any reasonable out-of-pocket expenses incurred. The Lender shall retain documentation in its files evidencing any such expenses.
- b. In the event of any such recovery, the Lender shall provide the Program Manager with a written statement with the following information: the name of the borrower; the amount recovered; the date the Claim was filed; and the date the recovered funds were deposited into its ACR Account, along with a copy of the deposit slip showing that the recovered funds were deposited into the ACR Account.